

Respondent appeals from an Order which requires respondent to provide medical care and treatment with Dr. Nanda N. Kumar for right carpal tunnel syndrome related to the hand/arm injury of April 1991. Respondent contends that the medical treatment should be denied because claimant has had an intervening accident at home. Respondent also contends that the Administrative Law Judge erred by ordering the medical treatment when,

at the time of the Preliminary Hearing, claimant acknowledged that he was not then in need of immediate medical treatment.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

(1) The Appeals Board does have jurisdiction to consider the first issue raised, i.e. whether the injury for which claimant is seeking medical treatment arose out of and in the course of his employment. In appeals from preliminary orders the jurisdiction of the Appeals Board is limited to consideration of appeals which allege that the Administrative Law Judge has exceeded his or her jurisdiction. K.S.A. 44-551. This is not a requirement that the appeal state certain "magic words." It is a requirement that the appeal raise an issue which, in substance, challenges the jurisdiction of the Administrative Law Judge to enter the appealed order. K.S.A. 44-534a lists certain findings which are subject to review on appeal from a preliminary order. They include findings as to procedural requirements for exercise of jurisdiction such as notice and timely written claim. They also include findings of accidental injury and arising out of and in the course of employment which are requirements for exercise of jurisdiction as a Court of limited jurisdiction.

The issue raised by respondent's assertion of an intervening accident does not fit exclusively within any of the issues listed within K.S.A. 44-534a. There appears to be no real dispute that claimant suffered an accidental injury arising out of and in the course of his employment in April 1991. Respondent contends, however, that the need for medical treatment resulted from a subsequent accident at home, not the April 1991 accident at work. From one angle, the issue raised by respondent could be considered to relate more to the nature and extent of that original injury. The decision by the Administrative Law Judge would be a finding that the original injury included the condition for which claimant currently seeks medical attention. From another angle, the issue is one requiring a determination regarding whether claimant's injury arose out of and in the course of his employment. In fact, the finding required in cases involving an alleged intervening accident is a finding which can best be viewed as simultaneously answering both questions. The Appeals Board does, therefore, consider the decision to include an issue which is subject to review on appeal from preliminary orders. Accordingly, the Appeals Board will review this determination de novo on the record presented.

(2) After review of the record, the Appeals Board finds, for the reasons stated below, that the injury for which claimant seeks medical care did not arise out of and in the course of his employment. Claimant did suffer an injury in the course of his employment in April 1991. Medical records from Dr. Kumar indicate evidence of early carpal tunnel syndrome. Claimant also had shoulder complaints at that time and he eventually underwent shoulder surgery. Following the shoulder surgery he also suffered an injury to his low back and underwent surgery for a herniated disc.

By claimant's own testimony, he did not have problems in his right hand or wrist after conservative treatment by Dr. Kumar in April 1991, although he was thereafter off work for substantial periods of time due to the surgery to his shoulder and back. Claimant did work then for Kansas Asbestos and for Central Mechanics. Claimant testified that he did not have any problems with his right hand or wrist in either employment. He worked for Central Mechanics as a general laborer for approximately six months. He also worked for Raymond Sherwood with framing-in of a home in Manhattan, Kansas. In this work he

did hammering with his right hand and testified that he did not have problems at that time. Finally, he went to work for Hall Brothers Construction in August 1993 and was still employed there at the time of his Preliminary Hearing in May 1994. He testified that he was a roller operator and had not had problems with his right hand or wrist in this employment. Claimant saw Dr. Koprivica in September 1993. His report indicates that claimant was not having problems with his right hand or wrist. The last report of treatment by Dr. Schmidt in June 1993 indicates complaint and treatment relating to shoulder but none relating to right hand or wrist.

Claimant testified that he had not had problems with his right hand or wrist until the winter months when he was doing work on the home after they had been flooded out. He had also put in a wood stove and was splitting wood and swinging a sledgehammer. He testified that this activity caused a return of symptoms to his right hand and wrist. He described them as similar to what he had experienced in 1991. He requested medical treatment but respondent refused on grounds that it was related to his work at home and not to the 1991 injury. By the time of the Regular Hearing in May 1994, claimant indicated he was no longer having any difficulty with his right hand and wrist.

From the above facts, the Appeals Board concludes that claimant experienced temporary exacerbation of problems in his right wrist as a result of injury from work at home. Accordingly, the Appeals Board finds that the injury for which claimant seeks medical attention in this case did not arise out of and in the course of his employment and respondent should not be required to provide medical care for that injury. The decision on this issue renders moot the other issue raised by respondent in this appeal.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Order of Administrative Law Judge James R. Ward, dated May 10, 1994, should be, and hereby is, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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James R. Ward, Administrative Law Judge  
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